

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT ANLAUF, individually

Plaintiff,

v.

UNITED STATES POSTAL SERVICE;
CYNTHIA KAY MCDONNELL and JOHN
DOE MCDONNELL, individually, and the
marital community comprised thereof; and
JOHN/JANE DOES 1-50,

Defendants.

Civil Cause No.

COMPLAINT

COMES NOW the Plaintiffs, above named, by and through their attorneys of record,
and for cause of action against the above-named defendants, alleges as follows:

I. PARTIES

1.1 Plaintiff Robert Anlauf was at all time relevant to this action a resident of
Albany, Oregon.

1.2 Defendants Cynthia Kay McDonnell and John Doe McDonnell, on
information and belief are residents of Roy, Pierce County, Washington and are believed to
have resided in Roy, Pierce County, Washington at all times relevant and material to this
Complaint.

1 1.3 Defendants Cynthia Kay McDonnell and John Doe McDonnell are spouses
2 and comprise a marital community believed to be residing in Pierce County, Washington. All
3 acts of these Defendants complained of herein were done both individually and for the benefit
4 of the marital community.
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6 1.4 Defendant Cynthia Kay McDonnell was at all times relevant to this action an
7 employee of Defendant United States Postal Service.

8 1.5 Defendant United States Postal Service at all times relevant to this action,
9 employed Defendant McDonnell within the territorial jurisdiction and venue of the above-
10 captioned District Court, who acted on behalf of the United State Postal Service.

11 AS TO DEFENDANTS John Does 1-10:
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13 1.6 Plaintiff alleges there may be persons or entities whose identity is currently not
14 known and who bear responsibility for the damages suffered by the Plaintiff. When the identity
15 of such persons becomes known, these pleadings will be amended to reflect their true identity.

16 **II. JURISDICTION AND VENUE**

17 2.1 This action is brought pursuant to the authority of the Federal Tort Claims Act,
18 Title 28 §2671, et seq. and Title 28, §1346(b) of the United States Code.

19 2.2 Pursuant to 28 USC §2672 and 2675(a) Plaintiffs filed and presented
20 administratively a claim for damages on standard form 95 the United State Postal Service more
21 than six months prior to filing this action. The United States Postal Service has failed to resolve
22 this claim. Thus, the option to file suit has now accrued and this action has been commenced with
23 the time limits established by the Federal Tort Claims Act.
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2.3 Plaintiffs have complied with all procedures as required by the Federal Tort Claim Act, Title 28 §2671, et seq. and Title 28, §1346(b) of the United States Code, and this matter is ripe for filing.

2.4 Venue is proper in the above-captioned District Court pursuant to 28 USC § 1391(e) due to the acts and omissions of employees of defendant described below in the above-captioned judicial district.

2.5 The United States Postal Service was provided with adequate service of process within the applicable statute of limitation period.

2.6 The United States Postal Service may be provided with service of process in accordance with the Federal Rules of Civil Procedure by serving a copy of the Summons and Complaint to the United States Postal Service Inspector General office located at 34301 9th Avenue S., Suite 242, Federal Way, WA 98003.

2.7. This court has supplemental jurisdiction over all other claims asserted in this action against Cynthia Kay McDonnel and Jane/John McDonnel under 28 U.S.C. § 1367(a) because they are so related to the claim asserted against the United States Postal Service that they form part of the same case or controversy under Article III of the United States Constitution and other applicable law.

III. FACTS

3.1 On November 21, 2017, on or near 11th Avenue and 10th Avenue, in Tacoma, Washington, the defendant, Cynthia Kay McDonnell was operating a motor vehicle owned by the defendant, United States Postal Service, with the express consent and permission of the United States of America.

1 3.2 At the time and place above mentioned, Defendant McDonnell was regularly in
2 the service and employ of the United States Postal Service and was acting within the scope of
3 her employment.

4 3.3 On or about Nov. 21, 2017, Plaintiff Robert Anlauf was walking across the street
5 in Tacoma, Pierce County, when Defendant's vehicle failed to yield and collided with the
6 Plaintiff, striking him from behind, and thereby causing injuries to the Plaintiff. At the time of
7 the collision, Defendant Cynthia McDonnell was driving her vehicle while under the course and
8 scope of her employment/agency with her employer/principal Defendant United States Postal
9 Service.

10 3.4 On or about April 30, 2018, Plaintiff Anlauf filed a tort claim with the United
11 States Postal Service in St. Louis, Missouri and the statute of limitation was tolled.

12 3.5 On or about May 9, 2018, USPS acknowledged receipt of Federal Tort Form
13 (SF-95)
14

15 3.6 On August 14, 2018, United States Postal Service acknowledge receipt for
16 Federal Tort Form (SF-95) in a phone conversation with USPS Attorney Kyle Harbaugh.

17 3.7 In September 2019, Plaintiff provided requested supplemental materials to
18 USPS.
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20 3.8 In October 2019, Plaintiff provided additional requested supplemental material
21 to United States Postal Service.

22 3.9 In August 2020, Plaintiff again provided additional supplemental materials to
23 USPS attorneys.

24 3.10 As of filing, Plaintiff has not received a final determination from USPS.
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1 3.11 This suit was duly commenced at least six months after Plaintiff filed the Federal
2 tort claim form (SF-95) without the agency issuing a final decision.

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4 **IV. NEGLIGENCE**

5 4.1 Duty: Defendants, thought common law, statute, regulation, and/or ordinance
6 owed Plaintiff a duty to drive attentively, keep a careful lookout, and to otherwise exercise
7 ordinary and reasonable care while operating a vehicle within the State of Washington. This
8 duty included a duty to obey all relevant rules of the road pursuant to RCW 46.61 et. seq.

9 4.2 Breach: Defendants breached duties as set forth.

10 4.3 Proximate Cause: As a direct and proximate cause of Defendant's breach of
11 duties as set forth, Plaintiff Robert Anlauf has suffered personal injuries.

12 4.4 Defendant Cynthia McDonnell, at all material times hereto, was an employee
13 and/or agent of Defendant United States Postal Service, and all acts or omissions by Defendant
14 Cynthia McDonnell were done within the course and scope of her employment/agency with
15 Defendant United States Postal Service, and for the benefit of Defendant United States Postal
16 Service. Therefore, Defendant United States Postal Service is liable for Defendant Cynthia
17 McDonnell's negligent acts or omissions as her employer/principal and under *respondeat*
18 *superior*.

19 **V. DAMAGES**

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21 5.1 As a direct and proximate result of the negligence alleged herein, Plaintiff has
22 suffered severe physical injuries and Plaintiff is entitled to fair and reasonable compensation.

23 5.2 As a direct result of the negligence alleged herein, Plaintiff has incurred and will
24 continue to incur medical expenses and other out-of-pocket expenses and Plaintiff is entitled to
25 fair and reasonable compensation.

1 5.3 As a direct and proximate result of the negligence alleged herein, Plaintiff has
2 incurred property damage, and has, and may continue to, incur loss of use and diminished value
3 of said property and Plaintiff is entitled to fair and reasonable compensation.

4 5.4 As a direct and proximate result of the negligence alleged herein, Plaintiff has
5 suffered and will continue to suffer physical pain and suffering and Plaintiff is entitled to fair
6 and reasonable compensation.

7 5.5 As a direct and proximate result of the negligence alleged herein, Plaintiff has
8 suffered mental and emotional distress, loss of enjoyment of life, past and future disability,
9 permanency of injury and Plaintiff is entitled to fair and reasonable compensation.

10 5.6 As a direct and proximate result of the negligence alleged herein, Plaintiff has
11 sustained past wage loss and loss of future earning capacity.

12 5.7 Plaintiff is entitled to reasonable attorney fees.

13 5.8 Plaintiff is entitled to prejudgment interest of all medical and other out-of-pocket
14 expenses directly and proximately caused by the negligence alleged in this complaint.

15 5.9 Plaintiff is entitled to costs and disbursements herein.

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19 **VI. RELIEF REQUESTED**

20 6.1 Special Damages for Plaintiff in such amounts as are proven at trial.

21 6.2 General Damages for Plaintiff in such amounts as are proven at trial.

22 6.3 Costs including reasonable attorney's fees for Plaintiff as are proven at trial.

23 6.4 Prejudgment Interest on all liquidated damages.

1 6.5 For such other and further relief as the court deems just, equitable and proper for
2 Plaintiff at the time of trial.

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4
5 DATED THIS 11th day of November 2020.

6
7 PHILLIPS LAW FIRM

8 *Doug Weinmaster*
9 Douglas T. Weinmaster, WSBA #28225
Attorneys for Plaintiffs